



Appeal of Harry O. Nysten

The sole question presented by this appeal is whether respondent properly denied appellant's claim for refund of renter's credit for 1976 because it was made after the time allowed for filing a claim for refund.

On May 13, 1981, respondent received appellant's 1976 California personal income tax return. The return showed no tax due, but claimed a refundable renter's credit. The refund claim was disallowed because it was not filed within the four-year statutory limitation period.

Appellant contests respondent's determination because he suffered a stroke and heart attack and was unable to file the return by himself. His son filed the return at a senior citizen's tax assistance office and was not advised of the limitation period.

Revenue and Taxation Code section 18432 provides that returns made on a calendar-year basis shall be filed on or before the fifteenth day of April following the close of the calendar year. Appellant's return for 1976, therefore, was due on or before April 15, 1977.

Section 19053 of the Revenue and Taxation Code provides, in pertinent part:

No credit or refund shall be allowed or made after four years from the last date prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer., or unless before the expiration of such period the Franchise Tax Board allows a credit, makes a refund, issues a notice of proposed overpayment, or certifies such overpayment to the State Board of Control for approval of the refunding thereof.

Under this section, appellant's claim for refund would have to have been filed no later than April 15, 1981. Because it was not filed until May 1981, it was untimely and the refund was properly disallowed. While we are sympathetic to the situation in which appellant's ill health made him unable to file a timely refund claim, the language of section 19053 is mandatory., and we have previously held that neither illness nor other unfortunate circumstances will excuse late filing of such a claim. (Appeal of Jules-Cowan, Cal. St. Bd. of Equal. June 23, 1981; Appeal of Manuel and Ofelia C. Cervantes, Cal. St.

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Bd. of Equal., Aug. 1, 1974; Appeal of Waldemar H. Bendig,
'Cal. St. Bd. of Equal., Aug. 5, 1968.) Appellant also
mentions that his son, who filed the refund claim for him;
was not told of the four-year limitation for filing such
claims. Such a bare allegation cannot convince us that
respondent should be estopped from denying the claim. (S e e
Appeal of Patricia M. Blitzner, Cal. St. Bd. of Equal.,
April 5, 1976.) It appears that appellant's son did not
consult with the senior citizen's tax assistance center
until after the statute of limitations had run, and would
be unable to show the detrimental reliance necessary for
estoppel in any case.

For the reasons stated herein, the action of the
Franchise Tax Board is sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Harry O. Nylén for refund of renter's credit in the amount of \$37.00 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of September, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Wevins present.

William L. Bennett, Chairman
Richard Wevins, Member
Frank Dronenburg, Member
Greg Collis, Member
John Bennett, Member